

Remarks

I. Amendments

Claim 1 has been amended to recite the phrase “wherein the pre-polymer has a molecular weight range of about 20,000 to about 30,000” from claim 8.

Applicants note that the polyfunctional crosslinking agent and pre-polymer are essentially consumed after reacting to form the membrane. Accordingly, the amounts of polyfunctional crosslinking agent and pre-polymer in the claims properly refer to the amounts of these materials present in the reaction mixture used to form the membrane, or the amount of reacted pre-polymer in the membrane. Accordingly, Claims 1, 26, and 30-32 have also been amended to more clearly indicate that the weight range of the polyfunctional crosslinking agent relates to its concentration in the reaction mixture, or the reacted pre-polymer in the membrane.

Withdrawn claims 44-51 have been amended to clarify the claim language and recite all of the limitations of the elected claims.

Claims 7 and 8 have been canceled without prejudice to their further prosecution.

The amendments to the claims are believed to be supported by the Examples. Thus, Applicants believe that no new matter would be added by entry of these amendments.

Applicants respectfully submit that the amendments to claim 1 should properly be entered, because amended claim 1 is effectively previously presented claim 8, rewritten in independent form. Thus, the amendment to claim 1 “present[s] rejected claims in better form for consideration on appeal” (37 C.F.R. §1.116(b)(2)).

Applicants also submit that claims 7 and 8 should be canceled (*see* 37 C.F.R. §1.116(b)(1)).

II. Rejoinder

As stated in MPEP 821.04(a):

Where restriction was required between independent or distinct products, or between independent or distinct processes, and all claims directed to an elected invention are allowable, any restriction requirement between the elected invention and any nonelected invention that depends from or otherwise requires all the limitations of an allowable claim should be withdrawn.

Applicants respectfully submit that the elected claims are allowable for the reasons stated below. Withdrawn claims 44-51, as amended, now recite all of the limitations of the allowable product claims. Accordingly, Applicants respectfully submit that the amendments to claims 44-51 should also be entered, and these claims rejoined.

III. Rejection Under 35 U.S.C. §103(a)

The rejection of the claims under 35 U.S.C. §103(a) is respectfully traversed. The Examiner has failed to establish a *prima facie* case of obviousness.

MPEP 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

First, *Fournier* (WO 97/17129) fails to *teach* all of the limitations of the present claims. Specifically, *Fournier* is silent in regard to at least the following:

1. a pre-polymer having "a molecular weight range of about 20,000 to about 30,000" (amended claim 1);
2. a weight range of the dialdehyde of "between about 4% and about 15% w/w" (claim 24);
3. a weight range of the dialdehyde of "between about 4.5% and about 9.2% w/w" (claim 25);
4. the crosslinking agent is a "divinyl sulfone", and the weight range of the divinyl sulfone is "between about 20% and about 60% w/w" (claim 26);
5. the weight range of the divinyl sulfone is "between about 40% and about 50% w/w" (claim 27);
6. the weight range of the divinyl sulfone is "about 45% w/w" (claim 28);

7. the weight range of the divinyl sulfone is “between about 45% and about 50% w/w” (claim 29);
8. the polyfunctional crosslinking agent is “a glycol diglycidyl ether”, and the amount of the glycol diglycidyl ether is “between about 500% and about 1,500 % w/w” (claim 30);
9. the percentage of the membrane derived from the pre-polymer is “about 5% to about 40% w/w” (claim 31);
10. the percentage of the membrane derived from the pre-polymer is “about 10% to about 20% w/w” (claim 32);
11. a membrane having a substrate of “heat bonded polyethyleneteraphthalate, optionally pre-treated with a non-ionic surfactant” (claim 38);
12. a membrane having a substrate of “poly(vinyl alcohol) paper” (claim 40);
13. crosslinkable moieties “treated with a coordinating agent” (claim 41);
14. crosslinkable moieties treated with a coordinating agent “in the form of a buffer” (claim 42); and
15. crosslinkable moieties treated with a “borate” (claim 43).

The Examiner has also failed to provide any reasons or arguments showing where *Fournier suggests* any of the above limitations. Thus, the Examiner has failed to show that *Fournier* teaches or suggests all of the limitations of the claims. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness.

Furthermore, the Examiner has failed to show how *Fournier* provides a suggestion or motivation to modify the membranes disclosed therein to provide the claimed membranes, or where such motivation may be found in “the knowledge generally available” to one skilled in the art. Instead the Examiner has improperly cited Applicants’ own disclosure as motivation to modify *Fournier* (see paragraph 6 of the outstanding Office Action which states, “[t]he teaching of Fournier and the broad range in the present claims would lead one of ordinary skill in the art to the broad claim range” (emphasis added). Thus, the Examiner has failed to demonstrate a motivation found in *Fournier* or in generally available knowledge to modify the membranes of

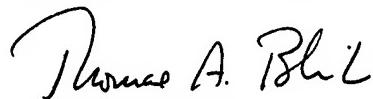
Fournier to provide the claimed membranes. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness.

Accordingly, and for the reasons stated above, Applicants submit that the present claims, as amended are allowable. Early notification thereof is respectfully requested.

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **Constructive Petition for Extension of Time** in accordance with 37 C.F.R. 1.136(a)(3).

Respectfully submitted,

COOLEY GODWARD LLP



Thomas A. Blinka
Reg. No. 44,451

Date: March 17, 2006
CUSTOMER NO. 58249
COOLEY GODWARD LLP
875 15TH Street, N.W., Suite 800
Washington, DC 20005-2221
(Tel) 202.842.7800
(Fax) 202.842.7899